

## An In-depth Analysis of the Evolution of the WTO Dispute Settlement Mechanism: Trends, Challenges, and Prospects

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### Abstract

The current research article gives a detailed analysis of the topic of the WTO's DSM by exploring the trends, challenges, and prospects of the DSM. The evolution process of the DSM is discussed with regard to the prominent trends explaining the gradual transformation of the instrument in the course of the global trade evolution. To that end, the article goes deep into exploring different difficulties that the DSM is currently experiencing, namely, the Appellate Body crisis, an increase in the time it takes to solve disputes and compliance. Specific measures that have been proposed are called into question, which relate to the reform of the Appellate Body, curbing backlog issues, and increasing the transparency of DSM actions. Evolutions of the selected trends are evident in the analysis of attempts to improve the DSM in line with modern trade conflict realities. Another frequent topic discussed in the course of the research can be named as transparency issues of DSM proceedings. This article covers several aspects important for openness, namely documents' availability, open and clear hearings, advanced notification, and clear statement of the decision made. Such transparency-boosting measures are in consonance with the endeavor of the WTO to become more responsible and inclusive in resolving disputes. Thus, the identification of an independent review mechanism and learning programs targeting the actors involved in capacity-building provide



additional grounds for the evolution of the DSM. Thus, this research article sums up the tendencies, threats, and opportunities that define the development of the WTO DSM. This way, the article outlined challenges that need to be resolved and opportunities offered by suggested reforms to consolidate a more effective DSM which will continue to address the intricacies of global trade while maintaining the efficiency of the multilateral trading system.

**Keywords:** World Trade Organization (WTO), Dispute Settlement Mechanism (DSM), Challenges, Appellate Body

### Introduction

Among international governmental organizations WTO, which was established to provide the system of cooperation and the place for the settlement of commercial disputes between the member countries, has been playing the role of one of the main pillars of the world trade system since its creation. First, it is necessary to note some essential features of WTO DSM that distinguish it from the traditional methods of international dispute resolution. An outline of these can be found among the notes to the agreements, more specifically in the Dispute Settlement Understanding that is a part of Annex 2 of the WTO Agreement.<sup>1</sup> The DSU is mandatory as well as legal in setting up a dispute for the examination between WTO Members concerning any of the covered agreements.<sup>2</sup> The much more complicated system is built around the Dispute Settlement Mechanism (DSM), which as the dispute-solution element in case of differences in interpretation and application of trade agreements is considered to be one of the most essential parts of the WTO system. It evolved with time as there was a growth in the level of economic relations between countries through trading. The talks of Uruguay round completed in 1994 and formation of the DSM can be regarded as a significant milestone in the WTO's history. Trade disagreements previously did not have a systematic way of solving them and

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<sup>1</sup> Marrakesh Agreement Establishing the World Trade Organization, available at: [http://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm), last visited 28.07.2024

<sup>2</sup> DSU, Article 23(1).

those engagements coupled with no legal means of coming to definite judgement, resulted in long-standing trade disputes and countermeasures. To address this discrepancy, the DSM laid down a mechanism of dealing with trade disputes which enhanced the legal status and the effectiveness of the multilateral trading system. The DSM has gone through several changes over time due to changes in the characteristics of trade globally. The DSM, which is a central component of the WTO, affects how the members of the organization approach and perform their trade obligations alongside dispute resolution. Recognizing the history of the creation of the DSM is important if one wants to analyze the present state of the DSM, its role in structuring the framework of international trade, as well as the problems it encounters on this path. This paper marks the starting point of a comprehensive analysis of the emergence of the WTO's DSM. Its major goal is to understand the patterns that have characterized its development – from the establishment of guidelines that were expected to be followed to the enhanced participation of member countries. At the same time, the study provides a critical evaluation of the challenges to the DSM focusing on the AB problem, and delay and adjournment in the determination of cases. Further, how it explores the prospects for development is assessed, and the changes and strategies recommended to enhance the DSM's utility, transparency, and overall operation. This paper's purpose is to explain the historical background of DSM in the world that is experiencing constant changes in trade relations. This will provide a necessary foundation to examine the DSM's current state and potential evolution in the constantly evolving context of contemporary international trade regulation. The Dispute Settlement arrangement or mechanism has been an essential factor that ensures the proper flow of affairs in the WTO in relation to the established WTO policies within the required international trading system. The DSM, which has evolved from the Uruguay Round talks that had led to the formulation of the AAA, has been effectively utilized and has set the tone of the provisions relating to dispute settlement amongst the member countries. In this research, the evolution of DSM is going to be examined in detail along with an insightful analysis of the

strengths and challenges faced by the theory in the course of its development, and opportunities that might enrich its growth in the future. Setting up of the DSM from a historical perspective was a positive contribution to the development of an international trading rules-oriented system. It is evolving in response to the interaction with international trade not merely adapting. As an effort to uncover the history of its development the present paper tries to incorporate elements of AHM while focusing more on the key change points and structural alterations. Several trends which are quite unambiguous and which directly signify a shift in the nature of international controversies have emerged as the process of evolution of the DSM grinds on. An enlarged caseload, an expanding number of participant countries, as well as the formation of precedents have made the DSM a resilient but rather multifaceted mechanism. These changes do, however, present certain difficulties that require attention, including the current situation with the Appellate Body and the issues of the time that cases take and non-adherence to the schedules. Pursuant to this, the following research objectives are proposed, Analysis of the mentioned trends and difficulties to gain a holistic understanding of their impact on the efficacy of the DSM. It also looks ahead at proposed strategies and/or other measures to build up the DSM's capacity. In the world that is currently far from saving its international markets as a source of business profit and conflict, it makes sense to consider and comprehend WTO Dispute Settlement Mechanism. Thus, as a historical analysis and as a piece of initial research to provide insights to the many and evolving facets of the DSM, this study aims to contribute to the ongoing discussion on the issue.

### **Brief overview of the World Trade Organization (WTO)**

#### **World Trade Organization (WTO)**

The most crucial organization in charge of admitting as well as regulating and encouraging the overseas commerce is the World Trade Organization (WTO). International, or nearly international, trade laws are set with the guidelines of the WTO or the World Trade Organization. It is the platform where countries come into discourse about their trade relations, solve trade

disputes, and encourage the liberalization of trade<sup>3</sup>. It also controls a system of restrictions on trade. Other barriers; and the eradication of the element of unfair trade practices in the global market. Businesses and activities that are captured by the WTO treaties are diverse cutting across the banking, telecommunication, government procurement, agriculture, textiles and apparel, industrial standards, food and sanitation, and intellectual property among others. Thus, WTO regulations commonly do not allow the discrimination of one partner country and giving preference to another. The locally produced goods and the imported goods should be equally favored. This needs to be true for trademarks, patents, copyrights, and both domestic and foreign services<sup>4</sup>. WTO rules compel global competition and national treatment for all goods and services, including foreign investment. The WTO treaties include a wide range of businesses and activities, including as banking, telecommunications, government procurement, agriculture, textiles and apparel, industrial standards and product safety, food and sanitation regulations, and intellectual property. In general, WTO regulations prohibit countries from favoring one trading partner over another. Locally produced goods and imported goods should be treated equally. This needs to be true for trademarks, patents, copyrights, and both domestic and foreign services<sup>5</sup>. as well as to gradually raise effective demand and actual income. The General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization (WTO) on January 1, 1995. The WTO's mandate was expanded to include a comprehensive set of rules governing international commerce, in addition to tariff reduction. The cornerstone for regulating and facilitating international trade is the World Trade Organization (WTO), a global international organization. The General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization (WTO) on January 1, 1995, and the WTO's scope was expanded to include a comprehensive set of regulations governing international trade. Key tenets

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<sup>3</sup> <http://www.njanepal.org.np/main.php?f=nljview2009&id=10>

<sup>4</sup> Ananda P. Shrestha, WTO, Globalization and Nepal, NEFAS, US Embassy, Ktm,2001,p.96

<sup>5</sup> HORST MUND, WTO, Regional co-operation and Nepal, NEFAS, US Embassy, Ktm,1999,p.60

that drive its operations form the foundation of the WTO. The idea of the Most-Favored-Nation (MFN) treatment guarantees that trade benefits are distributed evenly among participating nations. Equal treatment of commodities produced locally and those imported within a nation's boundaries is emphasized by the notion of national treatment. The WTO's Dispute Settlement Mechanism (DSM) is the central component of its operations. Member country trade disputes can be settled using this system in an organized, rule-based manner. The DSM is triggered when a member nation feels that another member is not abiding by WTO obligations or that its trade interests are being negatively impacted. It involves discussions and if the need arises the formation of committees to determine the cases. These panel reports are circulated to the Appellate Body, which is another quasi-judicial body.

The start of WTO was during the Uruguay Round discussion, which led to the creation of WTO. Internal changes occurred at the institution in terms of the setting of precedents, frequency of cases, and challenges witnessed in the course of its operation such as the Appellate Body crisis and the case settlement problems. This shows that the WTO and its DSM have faced challenges that one has to pay heed to despite the two's effectiveness. One of the changes that have been brought about by such challenges, which include the Appellate Body crisis, and slow dispute settlement, among other things, is a reconsideration of the systems. Modern research focuses on those problems and assesses the potential for improvements, examining proposed alterations and strategies to enhance the DSM's effectiveness.

Due to DSM, WTO plays an important role in creating an international commercial system based on rules. It provides the participating countries with an opportunity to solve disputes in asymptotic manner and contributes to predictability, equity and stability in the international economic relations. The DSM is an important tool for the countries that are involved in the complex system of global trade because it is one of the cornerstones of the WTO and symbolizes the organization's intent and ability to preserve the spirit of liberalization of trade.

### Founding Principles

One of the WTO's basic principles is the Most-Favored-Nation (MFN) principle according to which trade benefits must be identical for all WTO members. The group also has opinions on national treatment, according to which, commodities produced domestically and those imported must receive equal treatment. The WTO built its activities upon several principles that regulate its work. The above values are, therefore, the centers of the organization's reason, which is to encourage fair and open trade internationally.

The Most-Favored-Nation (MFN) Treatment is the first fundamental principle where the members are required to extend the same trade advantages and privileges between them. This idea promotes equity due to its ability to discourage discrimination and ensure that all the business partners are given the same special treatment by offering preference to all of them. The second principle is the National Treatment principle according to which once the commodities have been imported into a country, they should be accorded the same treatment as the domestic produced goods. This eliminates unfair competition against foreign goods by ensuring that domestic and imported goods conform to the same legal and regulatory framework. Equality is another cardinal principle that is inherent in WTO trade negotiations; this is in terms of reciprocity. When member nations are bargaining, they do so on the basis of reciprocity, with the expectation that Directory Info Celebrates the Saudi Efforts to Safeguard the World's Cultural Heritage II7 concession by one will be reciprocated by others. It does stress the notion that it should be beneficial to both countries involved in trade. Participation is one of the key features of WTO. This makes it compulsory for the member nations to report on measures such as tariffs, regulations, and other trading interest rates or strategies and to make their policies and practices in trading visible. Due to this openness, one can better understand each member's trade policies. The WTO wishes to give a stable and predictable environment for international trade. This is attained by seeking to define clear standards and behaviors and achieving resolution of disputes through a Dispute Settlement Mechanism

(DSM). It means that when there is certainty, businesses are assured to indulge in international business activities with much ease.

The WTO understands that developing countries in their structure need and should be given special and diverse treatment because the levels of development of the members of the organization differ. This creates flexibility for these nations in terms of undertaking their obligations and assistance is provided to enable them to integrate with the world economy. Specifically, MFN and national treatment are classified as subcategories of non-discrimination. To ensure that the treatment of members in the international trade system is equal, it points out that discrimination against trade partners should not be allowed. All these principles form the basis of the WTO's work promoting equality, justice and cooperation in the context of the WTO.

### **Dispute Settlement Mechanism (DSM)**

The WTO's Dispute Settlement Mechanism (DSM), a vital instrument for settling trade disputes between member countries, is essential to the organization's efficacy. Firstly, there are several features of the WTO DSM that distinguish it from traditional international dispute resolution approaches. These features are outlined in the Dispute Settlement Understanding (DSU) that is part of Annex 2 of the WTO Agreement I. It is a mandatory and legally enforceable system that restricts dispute resolution between WTO Members to the DSU<sup>6</sup> for any disagreement on any of the covered agreements. Furthermore, the DSU stipulates a number of guidelines that prohibit the respondent WTO Member from avoiding the hearing<sup>7</sup>, and a WTO Member who is the target of a dispute resolution action initiated by another WTO Member must acknowledge this. A dispute settlement panel's final decisions and suggestions are also legally binding on the parties. In theory the WTO political organs can review such rulings and recommendations but only a consensus of these political organs to reject the

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<sup>6</sup> Marrakesh Agreement Establishing the World Trade Organization, available at: [http://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm), last visited 08.01.2024

<sup>7</sup> DSU, Article 23(1).



panel or the Appellate Body (AB) report prevent such reports from becoming binding<sup>8</sup>. In actuality, no such report has been turned down thus far. Lastly, the DSU includes enforceable prescriptions for remedies as well as comprehensive guidelines for monitoring the application of panel and AB<sup>9</sup> recommendations and verdicts<sup>10</sup>. Second, can judgments about China's approach to alternative dispute resolution models and its approach to the WTO DSM be made in light of these features? China included a caveat to its article 66 on the referral of disputes to the International Court of Justice (ICJ) when it ratified the Vienna Convention on the Law of Treaties (VCLT) in 1997. Since then, it has expressed reservations about all of its international agreements' dispute resolution clauses<sup>11</sup>. China only consented to be a member of the International Centre for Settlement of Investment Disputes, which was the only international court jurisdiction China had before the WTO. (ICSID) in 1993, whose authority, therefore, extends to a particular dispute provided that both parties have given their previous consent<sup>12</sup>. China has a history of not taking part in dispute resolution, as evidenced by the fact that it has not filed any formal complaints with the Center and that the ICSID only registered what is presumably the first investment treaty suit against China<sup>13</sup> in May 2011. Through a series of discussions and adjudication processes, the DSM promotes the peaceful

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<sup>8</sup> DSU, Articles 6,7 and 8.

<sup>9</sup> DSU, Articles 16(4) and 17(14).

<sup>10</sup> DSU, Article 21

<sup>11</sup> In the absence of withdrawal of the measure found to be contrary to a WTO obligation, compensation and suspension of concessions (DSU, Article 22)

<sup>12</sup> J. Bourgeois and R. Soopramanien, "The World Trade Organization Dispute Settlement System: Embedded in Public International Law?", in: C. Baudenbacher (ed.), *Dispute Resolution, GLP*, Stuttgart (2009), at 315; featuring "four automaticities: automatic jurisdiction, automatic acceptance of panel report, automatic acceptance of Appellate Body reports, and automatic authorization of retaliation" - S. Wenhua, "Redefining the Chinese concept of sovereignty", in: W. Gungwu and X. Yongnian, *China and the New International Order*, Routledge, Oxon (2008) 53, at 66.

<sup>13</sup> M. D. Harpaz, "Sense and Sensibilities of China and WTO Dispute Settlement", 44 *Journal of World Trade*, 6 (2010), at 1166.

resolution of disputes by offering an organized and rules-based approach to conflict management. The World Trade Organization (WTO) created the WTO Dispute Settlement Mechanism (DSM) as a systematic procedure to handle and settle disagreements among its member nations over their adherence to WTO agreements and regulations. A vital part of the WTO, the DSM offers a legal framework for the peaceful resolution of trade disputes and advances the organization's objective of promoting an international trading system based on rules.

### **Functions of the WTO Dispute Settlement Mechanism:**

#### **Consultations**

Consultations between the parties in dispute are the first step in the DSM. Formal discussions are requested by the aggrieved party from the member it believes has breached WTO agreements.

The purpose of consultations is to provide the parties a chance to talk and work out a settlement for their disagreement. The goal of this diplomatic stage is to find a solution without going through with a formal trial. The first step in the dispute settlement procedure is consultations under the WTO Dispute Settlement Mechanism (DSM). They offer the opposing parties a chance to have a diplomatic conversation with the goal of reaching an amicable resolution to the trade dispute. An outline of the WTO DSM consultation procedure can be found [here](#).

#### **Voluntary Consultations**

In order to initiate the procedure, the "complainant," or complaining party, must first request voluntary talks with the member it feels has broken WTO accords. The written request for discussions includes a description of the particular trade issues as well as the complaint's legal foundation.

#### **Timely and Good Faith Engagement**

It is expected that the member who is receiving the complaint, referred to as the "respondent," will promptly and sincerely engage in conversations. During this phase, all parties are encouraged to interact constructively, share information, and look for a solution that works for both of them.

#### **Duration of Consultations**

The consultations must happen within a certain period of time, often not more than sixty days. There is however the freedom of the parties to by agreement extend this timeline in order to meet a particular goal. The idea is to give both parties an opportunity to discuss and arrive at a consensus without the necessity of an actual trial.

#### **Confidential Nature**

Due to the fact that consultation is done in private, both parties will be able to express their problems and contemplate solutions and possible remedies without intervention by third parties. This is because communication should be free during consultations so as to avoid arts being put on by patients.

#### **Failure to Resolve**

The complaining party then may pursue the matter to the next level where he could request a dispute settlement panel if the issue is not resolved within the specified time of negotiation. The set formal procedure commences with the panel's request for evidence, which marks the conclusion of the consultative phase.

#### **Notification to the Dispute Settlement Body (DSB)**

Both parties are supposed to provide the progress in consultations to the WTO's Dispute Settlement Body (DSB), allowed during or at the end of the consultation period. It also has an option of protesting against the consultations offered and stating that the complainant wishes to proceed to the next level.

#### **Importance of Consultations**

Consultation is one of the essential pillars of the DSM to show that WTO is keen on the resolution of disputes via negotiation. As mentioned above, the WTO's aim of encouraging nations to sort out their trade issues amicably before escalating to the use of formal legal proceedings is evident in the diplomacy of consultation. It is noteworthy that consultations as one of the principles of the WTO DSM reflect the work of the organization based on the principles of cooperation, making decisions in good faith. Although many controversies are not resolved at this stage, the procedure helps the participants discuss the issues and allow the participants time to think of

another course of action before proceeding to a more serious and legal process.

### **Establishment of Panels**

If consultations do not achieve a situation in which the complaining party is satisfied within a certain time, the complaining party might ask for the creation of a dispute settlement panel. The panel comprises individuals operating outside Civil Service and possessing the qualifications in commerce and/or law. These involve examining the controversy, or hearing out the two parties' positions, as well as arriving at an evaluation from WTO predetermined terms. The formation of panels is one of the critical facets of the WTO's Dispute Settlement Mechanism (DSM). The following is the stage that begins when the complaining party demands the formation of a dispute settlement panel after consultations between the disputing parties prove futile.

An outline of the steps involved in creating panels inside the WTO DSM may be found here:

### **Request for Panel**

A respondent that has been filed, also known as a complainant, may request for formation of a dispute settlement panel if negotiations do not yield a viable solution within the stipulated time which is sixty days in most cases. The written request of the parties which is prepared in detail outlines the specific issues under protest, the legal grounds of the complaint, and is addressed to the Dispute Settlement Body (DSB).

### **Panel Composition**

As a rule, the panel is composed of three persons with experience in trade law and other related fields. The panelists were chosen with much concern about their neutrality and specialty on the given subject. Panels are appointed from a list of persons endorsed by the DSB and recommended by WTO member countries.

### **Panelists' Independence and Impartiality**

It is achieved by ensuring that the panelist selected has the capacity and authority to make decision independently without bias this will ensure that

the dispute settlement procedure follows the International Standard. As they are not actual politicians for a specific country, they are required to consider the matter rather objectively based on the specific WTO agreements in force.

### **Terms of Reference**

Creating the panel's terms of reference comes next when the panel is assembled. The panel's precise topics and the extent of its study are specified in its terms of reference. The parties in dispute have agreed upon the terms of reference, which are a crucial document that directs the panel's work.

### **Panel Proceedings**

The complainant and responder both offer arguments and supporting documentation during hearings held by the panel. The purpose of the procedures is to enable a thorough investigation of the disagreement, giving both sides a chance to present their positions and address one another's arguments.

### **Panel Report**

The panel examines the dispute and then publishes a comprehensive report with its judgments, recommendations, and findings. Transparency in the dispute settlement process is promoted by the report's submission to the DSB and public release.

### **Adoption or Rejection by the DSB**

The panel report is reviewed by the DSB, which is made up of representatives from every WTO member nation. The report is put forth for approval, modification, or denial. The respondent is expected to align its measures with the results if the report is approved. If changes are recommended, the panel's legal interpretations and recommendations could need to be adjusted. A crucial component of the DSM is the creation of panels, which guarantee an exhaustive and unbiased investigation of trade disputes. It supports the WTO's dedication to a rules-based framework and aids in the just and efficient settlement of disputes amongst member nations.

### **Appellate Body Review**

Any disputing party may file an appeal against specific legal conclusions or interpretations made in the panel report. The Appellate Body, a distinct

quasi-judicial body made up of seven people with experience in trade law, hears the appeal. Terms of Reference:

Drawing the terms of reference of the panel is the next step when the panel is formed. What is more, the precise topics within the panel's focus and the scope of its work are defined by the terms of reference. The parties themselves have settled on the terms of reference simply known as TORs, which is a very important paper that guides the work of the panel.

### **Panel Proceedings**

During the hearings conducted by the panel the complainant and the responder provide evidence in relation to the complaint. It is notable that the aim of the procedures is to allow one side to clearly state its case and respond to the case of the other side.

### **Panel Report**

The panel analyses the cases of disagreement and comes up with a report that contains judgements and findings as well as recommendations. Pursuant to transparency in the setting of dispute for its settlement, the report is made to the DSB and to the public.

### **Adoption or Rejection by the DSB**

The panel report is forwarded to the DSB, which is made up of members drawn from each member country of the WTO. The report is presented to be approved, changed/rejected. The respondent is also expected to coordinate its activities with the results if the report is passed. If changes are suggested, the panel's legal premises and recommendations might also have to be altered. Another significant attribute of the DSM is the formation of panels, the existence of which ensures that all trade issues are investigated thoroughly and impartially. It assists in the implementation of the WTO's commitment to a rules-based system and helps in providing justice towards the resolution of any controversy with member states.

### **Appellate Body Review**

Either party dissatisfied with the matter in dispute may appeal in relation to a specified conclusion of law or a specified interpretation made in the panel

report. The Appellate Body is an independent reviews organ of seven members with backgrounds in international trade law that hears the appeal.

### **Adoption or Rejection of Reports**

After reviewing the panel and Appellate Body reports, the DSB has the option to accept, amend, or reject them. The member whose measures are deemed to be in breach of WTO regulations is expected to comply with the report's findings if it is adopted.

### **Implementation**

In order to bring their policies or actions into compliance with WTO agreements, members that violate WTO regulations must take corrective measures. If the violating party fails to do so, the prevailing party can apply to the DSB for permission to impose trade sanctions. The DSM is essential for compliance with the agreements and regulations signed by WTO members. It improves the stability and predictability of global trade by providing a clear, rules-based dispute resolution process. The purpose of the system is to ensure that trade disputes are resolved fairly and equitably and that every member has an equal opportunity to compete.

### **Significance in Global Trade Governance**

The WTO is essential for promoting a rules-based international trading system. It provides a forum for member countries to resolve their differences amicably, thereby promoting predictability, fairness, and stability in international trade relations. The DSM is an essential component for countries involved in the complex international trade network, as it is a fundamental feature of the WTO and represents the organization's commitment to upholding the principles of open and transparent trade.

### **Challenges Faced by the WTO's DSM**

Challenges have however prevailed, and affected the DSM of the WTO as illustrated by the following; Among these challenges, a concern that has been termed as one of the most cumbersome is the issue of the Appellate Body. Another working centralized organ, the Appellate Body responsible for assessing the legal issues in trading disputes, has been crippled by issues in the appointment of new members as well as term expiration for current members.

This has been a big setback on the DSM in that it has slowed down the efficiency of cases, and the TASK of conflict solving as a whole. Presently, WTO's Appellate Body has a serious crisis that severely hinders its functioning because of several challenges. A core component of WTO DSM is the Appellate Body which has the mandate of addressing legal, issues concerning trade disputes. The issues of membership, where WTO member nations have to find consensus on who should be readmitted or retained as members, is the core of the issue. However, the roles and responsibilities in the group have not been played efficiently and flexibly due to differences in opinions and conflict within the group and failures in reorganizing members or opening a new seat for new members when term is expired.

Additionally, the crisis has been made worse by some WTO members taking longer to accept people who are nominated to join the Appellate Body. In other words, it means that we are on the verge of this body becoming non-functional due to less-than-required membership figures. This has caused a major problem with the Appellate Body because panels established for trade dispute settlement have sometimes lacked quorum with one or even two members short of what is needed because nominations have not been agreed upon and as such, quorum dropped gradually. Additionally, the current tenure system in case of non-re-appointment failure of incumbent AB members has put greater pressure on its workability. Therefore, trade disputes have overwhelmed the system during this crisis which leaves AB grappling with massive workload management problems. At some points, this slow resolution of disputes in fact impeded the effective operation of WTO DSM too. Parties involved in trade disputes are left uncertain about whether an Appellate Body exists that can review cases and provide legal opinions on these issues leading to significant impacts on dispute settlement. Experts say that there are many reasons why these appointments have not been made but it appears that they mainly relate to geopolitics rather than lack of merit. However, it should be understood that the Appellate Body's activities have been hampered and could not work well. The ongoing negotiations are geared towards identifying solutions and adjustments that could restore credibility to



the WTO dispute settlement mechanisms. That is why the solution will require joint efforts of member countries in order to take appropriate measures to implement them and end such a crisis.

This Appellate Body crisis has become a recurrent problem or else the delays in dispute settlement. While consultations, panel formations, and reports must be stressed many cases have taken time in the DSM process which is supposed to provide trade disputes with quick solutions. These delays may compromise the effectiveness and credibility of the DSM. Another key issue is that cases tend to be complex. Over time, this body has encountered challenges due to the growing complexity of legal and technological matters involved in trade disputes. It puts a strain on DSM's capacity because dealing with complicated litigation requires substantial resources for thorough examination of numerous legal issues. The DSM also faces issues with non-compliance and enforcement. The losing party adhering to the advice of this supreme body, and aligning its governmental actions with WTO agreements has been an ongoing problem even in cases where one side proves victorious. The enforcement power of the DSM is limited by the lack of a coercive element to make it compulsory. In addition, the resolution of these disputes is further complicated because they involve a range of legal issues including those relating to intellectual property rights; tariffs and non-tariff barriers (particularly technical regulations); and subsidies. The DSM has to deal with a vast variety of legal issues pondering from conflicts, hence putting pressure on the capacities and resources ultimately. A second handicap is the political touchiness of trade rows. One of the other obstacles is political sensitivities that needs to be taken into account relating trade disputes. An unwillingness in states to adhere to rulings that can be politically difficult at home might also challenge the effectiveness of DSM guidelines as a whole, hampering their implementation.

The Appellate Body crisis and the persistent dispute backlog have significantly eroded confidence in the DSM. This may lead to conflicting parties seeking other routes or going their own way in the absence of a multilateral structure envisaged by WTO. As part of the reform, requests

have been made to solve the Appellate Body problem and enhance enforcement measures; processes are streamlined in recognition that reforms need to be in place. The motivation for reform proposals is to strengthen the DSM beyond its existing constraints and ensure that it can work without demerit being brought upon by changes in trade dispute settlement processes amongst participating nations. These are now subject to permanent discussions and negotiations at the World Trade Organization, in order to improve the dispute resolution process and find possible solutions.

### **Reforms and Proposed Changes**

The proposed reforms to the World Trade Organization's (WTO) Dispute Settlement Mechanism (DSM) aim to address several key issues, including strengthening the Appellate Body, resolving the Appellate Body crisis, and promoting transparency in DSM proceedings. Here's an overview of these proposed changes:

#### **Strengthening the Appellate Body**

The purpose behind the reforms in this system is to enhance the effectiveness of the AV and its results because the part that considers legal issues related to trade controversy is very important. Suggestions include investigating an Appellate Body member's appointment method and ensuring that methods other than election are used; and timely emptying vacancies are filled. Among the suggested changes that are intended to enhance the DSM, one of the objectives is to strengthen the WTO's Appellate Body. In many of these undertakings, it becomes pertinent to evaluate the structural set up of the Appellate Body, the method of appointing and the general performance.

Amendments prove the need for changing the fact of appointing the Appellate Body members. The proposals are intended on giving definite criteria on how to select them, ensuring trade expertise, and address the concerns on conflict of interest. The enhanced and standardized Roster Appointment procedures are expected to enhance the legitimacy and impartiality of the Appellate Body. Some of the evaluated proposal factors include the nature of the terms of the Appellate Body members, and when they may be renewed. An important point to ponder is how to achieve

consistency in the gaining of knowledge while at the same time not using wordings that are lengthy and compromise neutrality. This shows a concern to build up a structure for a stable and informed appellant's body. In relation to reform, one of the various initiatives includes examining other means of appointment for members of the Appellate Body. To ensure the needed competence and geographical diversity of the Appellate Body, this may involve looking for other nomination procedures: studying the example of other organizations for selecting some of the members of an Appellate Body through *ex officio* appointments, studying the use of such rather fair procedure as selecting impartial experts, or using other strategies. Thus, the reform process is impossible to be finalized without resolutions for the Appellate Body's caseload. In order to enhance the efficiency of the dispute settlement procedure, tighter timeframes for completing reports for the Appellate Body and plans to accelerate case resolution are discussed. Enhancing the correspondence between the two groups of the parties in conflict and the Appellate Body has been also deemed as the major aspect of changes. A full understanding of the nature of the process of dispute resolution can be achieved through the use of transparent communication about the state of cases, directions and processes, and justification of judgments. Planned measures that are now being envisaged as part of the process to strengthen the Appellate Body are being contemplated in terms of enhancing the capacity. That is why it is necessary to provide training and support to enhance members' understanding and ability to make appropriate decisions regarding the associated complex trade issues that require legal knowledge. Also, reforms stress the importance of the convergence of WTO member states on many issues concerning the functioning and role of the Appellate Body. As a result, it can be seen that discussions and meetings are specifically undertaken to seek cooperation on potential disagreements on the function of the Appellate Body in the DSM.

Based on the findings of the study conducted it was recommended that periodic review of the performance of the Appellate Body should be conducted by a neutral party. Thus, through this external review process, the

Appellate Body will remain as an institution that will be built upon and be able to address the dynamic needs of the WTO membership. To sum up, the complete reform agenda aims at enhancing the capacity of the Appellate Body to meet the undertaking of the WTO's dispute settlement, and further make it more operational, concrete, and powerful. These actions are the constituent parts of more extensive measures that are aimed at maintaining the effectiveness and credibility of the DSM as the tool supporting justice and regulation-based trade in the world.

#### **Addressing the Appellate Body Crisis**

The Appellate Body crisis that persisted from challenges in nominating and reappointing members is the proposed amendments' obvious target. The goal is to challenge the deadlock in an attempt to solve the root problems and reach a consensus on the appointment of a director-general, maybe through bargaining with other WTO members. The WTO Appellate Body crisis is essential to restore the DSM's operation and regularity to be resolved. Several tactics have been put in place others to tackling the problems pertaining to the Appellate Body as a result of the crisis.

This is where the commitment of WTO member nations in the process of negotiation and arriving at the solution on matters to do with appointment and reappointment issues of Appellate Body members lies at the very center of the resolution efforts. In dispute-solving and international relations, there is always a need to have diplomacy and find the middle ground. Among those amendments is the amendment on the composition of the Appellate Body members: This includes fixing some of the problem areas such as conflict of interest, revisiting the question of selection criteria, and bringing in more transparency in the system implying merit-based appointments. It is for this reason that the provisions of the said amendments are meant to enhance the neutrality and integrity of the Appellate Body. Due to the notification of the issue, short-term solutions have been provided or thought of. For immediate solutions to the existing problems such as the case backlog, the staff could use some interim measures such as introducing other methods of solving conflicts while a negotiation process takes place to arrive at a more comprehensive

solution. Scientists are turning their eyes on stop-gap measures to attain some sort of permanency in the interim while structures are being further developed. For these steps, they may include pro-longing terms in office as the Appellate Body members; court temporary measures that can ensure the continued functioning of the WTO dispute settlement process. The WTO member countries have to be extremely involved in order to manage the crisis of Appellate Body. Essentially, the settlement process can only be facilitated by communication, bargaining, and shared attempts at understanding other parties' needs. The proposals have it that an independent evaluation mechanism needs to be put in place to determine how efficiently the Appellate Body is functioning. An outside assessment of the crisis intervention will help in its analysis to determine the issue that could have caused the crisis and how the team can increase its impact and efficiency. Among the issues considered to be critical in crisis resolution, the reappointment of Appellate Body members on time cannot be overemphasized. It can mean that reforms could focus on extending the period for a working out institutional procedure, excluding unnecessary staking, and implementing the mechanisms of the working out of the problems connected with reappointments of members. The option of coming up with new or tentative guidelines/procedures relating to the circumstances particularly during a specific crisis or tough times is also considered during emergence of the Appellate Body. Clear and well understood rules may help to manage cases properly and provide principles for the decision-making in the trade disputes. It is crucial to restore the confidence and the members' trust. Reconstructing them can be a primary objective for WTO. The situation with the Appellate Body must be negotiated by the member countries, to bring the ideologies of multilateralism, transparency and commitment to the WTO basic principles of trade.

Finally, it can be suggested that adopting the widespread approaches with reference to the members of the WTO, the crisis resolution process should consider a number of perspectives. In the case of reform, extra efforts should be made in terms of active listening to specify as many interests and concerns

as possible for various countries to make sure general support is present. Hearings, advisory centers, and the Appellate Body are the institutions to consider; The goals are to restore its functionality and maintain the WTO's principles of an impartial and swift dispute settlement.

### **Promoting Transparency in DSM Proceedings**

I found transparency in the DSM proceeding to be one of the defining features of the suggested revision. It is also assumed that enhancing the transparency of the dispute settlement procedure can be considered as the critical step for the DSM's maintenance of its legitimacy and members' trust. Suggested improvements may occasionally involve raising the transparency of panel and Appellate Body proceedings, explaining case details in a format that is more accessible to the public, and improving communication in relation to the status of disputes. Enhancing the general fairness in the DSM as well as preventing the settlement process in WTO proceedings from being lengthy, unfavorable, and obscure is one of the main objectives of the WTO transparency agenda. Several consultations have been made to enhance the openness of WTO DSM processes to the various stakeholders.

One suggestion is to raise public's access to such records that relate to legal issues or lawsuits. This consists of Reports from panels and the Appellate Body, arguments from the parties involved, and any other papers that may be coupled to it. As a result, people, including stakeholders, and the general public comprehended the proceedings as well as the legal arguments which have been pleaded more easily in the light of transparency. Another way in enhances transparency is open hearings. Alerting the public especially the NGOs and any other interested parties in the society to watch or even participate in the hearings may help in fashioning the conflict solving procedure more open. As for the general believe in that, references are supposed to provide preliminary notice of a dispute's proceedings for transparency. The parties in dispute and interested parties could notify them in advance of the cases that are likely to affect them thus be in a better position to prepare to take an active role in the case. Also, in an effort to enhance openness, decisions made in the panels and Appellate Body are

disseminated in a clear manner. The improvement of decision-making accessibility and comprehensibility, as well as making decision making easier, ensures that the rationale of decisions made is communicated to the larger society. Thus, it is recommended to post *amicus curiae* (friend of the court) arguments in an attempt to present more opinions regarding the dispute. Publicizing these submissions may also assist in protecting decision making from what is 'not well understood' to informed decision making. Other determinants stated that the provision of briefings and status updates on the current position of the dispute proceedings also increase the level of transparency. Thus, the major events related to significant dates, changes in the procedural framework, and the expected actions in the course of the dispute resolution process are also reported to the stakeholders. The key is to set up better ways to communicate with stakeholders, better procedures in other words. To provide answers to questions and to ensure clarity as well as to enhance the level of transparency of such process, it implies engaging the representatives of the industry and non-governmental organizations and other stakeholders. Another way of expanding openness is to push out the legal briefs produced by the other sides in the conflict. Such a way the public could be informed about the legal arguments made through the period of the dispute as well as the factors considered by the panels and the Appellate Body. Publication of the annual reports on operations which DSM intends to carry is still another suggestion. This report can facilitate the improvement of DSM as they offer brief details in the cases conducted, trends of dispute resolution, as well as any challenges faced.

In the last place, it is necessary to stress that the solutions connected with the attempt to enhance the stakeholders' capacity can contribute to the development of openness. Thus, training programs, workshops, and informational sessions can help the stakeholders introduce a better sense of conflict complexity thus allow themselves to play the role of effective conflict solvers. To sum up, there should be common strategy to enhance the transparency of the WTO DSM procedures. They include increasing documents' availability to the public, conducting open hearings, giving

advance notice, explaining the decisions made, amicus curiae submissions, conducting regular briefings, enhancing stakeholders' communication, legal submissions, among others.

### **The EU's Trade Dispute Settlement Mechanism: An alternative to the WTO DSU**

The largest integrated regional trade organization in the world, the European Union (EU), is a major importer and exporter worldwide. As such, it has a significant impact on international relations and has the ability to influence and draw from the operations of numerous significant international organizations (Odermatt, 2021, for instance). It has long been believed that the EU's legal system is independent on the inside as well as the outside (Wessel and Blockman, 2013). But the EU has also been willing—indeed, has chosen—to assimilate foreign standards and principles into its legislative framework<sup>14</sup>. As the EU's foreign contacts have grown and its exterior legal authorities have expanded, Additionally, the EU has the power to affect global laws and regulations.

Specifically speaking, the EU represents all of its member states and possesses full competence within the World Trade Organization (WTO). As a result, the EU and the WTO interact directly, which has encouraged cross-fertilization. Furthermore, it has been noted that the GATT 1947 served as a foundational document for the European Economic Community when the EU's free movement policy was being drafted. Complimentarily, when the Uruguay round took occurred at the WTO, the EU as the direct negotiator attempted to protect the *acquis* as well as offer advice on effective WTO law which eventually informed WTO legislation (Kuiper and Hoffmeister, 2013).

The European Union has considerably increased the scope of its trade laws throughout time, both domestically and internationally. The latter is the main topic of this essay, specifically the evolution of the WTO and EU dispute

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<sup>14</sup> Article 216 (2) TFEU provides that international agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.



resolution procedures that regulate commerce between the EU and third nations. trading agreements that encompass the vast range and variety of goods and services traded govern many of the EU's trading interactions. Trade agreements commonly include dispute settlement clauses to guarantee adherence to these accords. These clauses serve a variety of purposes, including informing parties when they fail to abide by the agreement., enable the parties to the agreement to resolve contradictions and varying interpretations of the terms of the agreement, and ultimately offer a means of resolving disagreements about how the agreement will be implemented. The likelihood of a dispute escalating and harming trade increases when an offended party takes unilateral action without the support of a well-designed dispute settlement process that offers a mutually agreed-upon avenue to resolve disagreements. Long-term relationships on both sides. Therefore, well-written clauses for handling non-compliance are essential to the critical performance of trade agreements, making dispute resolution procedures one of the most important components of any settlement. The availability of dispute resolution mechanisms guarantees that trading partners receive the benefits resulting from the agreement even in the event that one of them fails to uphold its provisions.

As part of the global organization that regulates commercial ties, the EU is a member of the World Commercial Organization (WTO), whose accords include a comprehensive dispute resolution framework and serve as the foundation for international trade. In order to restore the WTO's dispute settlement process to full functionality, the EU is advocating for changes to the multilateral trading system (European Commission, 2021). In addition to this multilateral strategy, the EU has been signing bilateral trade deals more frequently. In addition to expanding and strengthening the reach of its trade agreements, the EU has made steps to include more judicialized dispute resolution procedures in those accords, which are mostly based on the WTO's dispute resolution process. Faced with the current condition of the paralysis of the WTO's dispute settlement mechanism and poor prospects for successful reform, the EU only lately started making use of the bilateral

dispute settlement provisions in its trade agreements (European Commission, 2021b). Given this, it is appropriate to analyze the dispute resolution processes found in the many different EU trade agreements. Reviewing the dispute resolution clauses in EU trade agreements and evaluating their development in light of their potential to offer the EU a workable substitute for the WTO dispute settlement mechanism—which is presently under scrutiny—is the goal of this contribution. The theory of conflict resolution systems is reviewed in the following section. The EU's FTA dispute settlement provisions are examined in Section Three, together with their historical development. This analysis is contextualized in Section Four with regard to the current state of international economic law dispute settlement and WTO dispute settlement. Lastly, we offer a summary. We contend that the EU has demonstrated a significant change in its provisions for bilateral dispute settlement, moving from a diplomatic effort to a more judicial process and that it is currently starting to assess the practicality of bilateral dispute settlement in light of the issues surrounding the WTO DSU.

### **Conclusion**

Thus, this in-depth examination of the WTO DSM development over time has brought to light a number of trends, challenges, and possibilities that define today's global trade conflict management. The history analyzed for the DSM has proven to be quite beneficial since it exposes a timeline of its growth. The outlined trends prove constant intentions to develop and adjust the DSM based on the shifts in the global trading environment. Solutions to issues, especially those concerning the challenges that the Appellate Body encountered, intend to enhance the mechanism which is currently regarded as less adaptable to modern trade disputes. With regards to the WTO, there are questions like the Appellate Body crisis, stalemates in the dispute settlement mechanism, compliance questions, etc., indicating that there is a need for extensive transformations. It is explored that strengthening measures proposed for the Appellate Body, measures for the reduction of backlogs, and measures for increasing the transparency of DSM's have also been discussed during the course of analysis. The call to increase transparency can be

distinguished as a key issue among the proposals that include providing the public with the documents, conducting the hearings, providing advanced notice, as well as presenting more understandable decisions. All these efforts to improve transparency are closely linked to the overall objectives of making the dispute settlement process of the WTO more open, transparent, and inclusive. Concerning the future of the DSM, there is going to be more negotiation, coalition formation, and institution of measures present and capable of meeting current and future global trade challenges. The creation of an independent review structure and earmarked training and development programs add to the possibilities of the DSM's future development.

As the WTO strives to solve the issues that pertain to the global trade system, this paper sheds light on the factors that define the DSM.

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